

STATE OF MICHIGAN
COURT OF APPEALS

BRIAN K. DAWSON and ERVIN HAXHIALA,

Plaintiffs-Appellants,

v

HELEN WORLEY, INC., d/b/a ABBY ROAD,
and d/b/a MIRAGE BAR,

Defendants-Appellees.

UNPUBLISHED

June 27, 2006

No. 266956

Wayne Circuit Court

LC No. 04-413042-NO

Before: Fort Hood, P.J., and Cavanagh and Servitto, JJ.

MEMORANDUM.

Plaintiffs appeal as of right from the trial court's opinion and order granting defendant's motion for summary disposition. We affirm.

Plaintiffs seek monetary damages resulting from a fight that occurred in the parking lot of defendant's bar. Plaintiffs alleged negligent conduct on the part of defendant and violations of the dramshop act. The negligence action fails as a matter of law because the dramshop act occupies the field of liability arising out of the sale or furnishing of alcohol to minors or visibly intoxicated persons. See *Mann v Shusteric Enterprises, Inc.*, 470 Mich 320, 327 n 8; 683 NW2d 573 (2004); *Tennille v Action Distributing Co.*, 226 Mich App 66, 69-70; 570 NW2d 130 (1997).

The dramshop claim also fails because plaintiffs did not comply with the name and retain provision of the act, MCL 436.1801(5). The purpose of the name and retain provision is to avoid collusion between a plaintiff and an allegedly intoxicated person (AIP) by ensuring that, at each stage of the litigation, the AIP has a financial stake in the outcome of the litigation. *Zoll v Brinkerhoff*, 170 Mich App 210, 214-215; 427 NW2d 914 (1991). There is an exception to the name and retain requirement where the identity of the AIP is unknown. *Salas v Clements*, 399 Mich 103, 110; 247 NW2d 889 (1976). However, to be excused from the name and retain requirement, the plaintiff must show that he did not know the identity of the AIP and that he exercised due diligence in attempting to ascertain the identity of the AIP. Plaintiffs merely alleged that the requirement was excused and did not delineate any effort that was undertaken to

identify the AIP. Accordingly, the trial court properly granted the defense motion for summary disposition.

Affirmed.

/s/ Karen M. Fort Hood

/s/ Mark J. Cavanagh

/s/ Deborah A. Servitto